

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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THE INTERNATIONAL BUILDING CODE DOES NOT IMPOSE A LEGAL DUTY

By Caroline Grech-Clapper

The Michigan Court of Appeals recently considered if the International Building Code created a statutory duty that imposed an independent legal duty upon a defendant. After considering the facts and law in the recently unpublished opinion of *Kahler v Rent-A-Center*, No. 293168 (10/14/10 Mich App), the Court held that it did not.

In *Kahler, id.*, Plaintiff sued when she fell down steps that did not have a handrail. She alleged that the handrail was required by the International Building Code. She argued that because the handrail was required by the International Building Code the defendants could not use the “open and obvious” defense because if a statute is violated that defense is not available.

The trial court disagreed and found that the code violation did not by itself impose a legal duty on the defendants. The trial court reasoned that “[w]hile the objectives and standards of this statute include “insur[ing] adequate maintenance of buildings and structures throughout this state and . . . adequately protect[ing] the health, safety, and welfare of the people,” MCL 125.1504(3) (e), the purpose of the Construction Code Act, MCL 125.1501 *et seq.*,”

Is not to protect the public against harm... but merely to establish the authority.
.. to “prepare and promulgate” a state construction code consistent with, and protective of, the “health, safety, and welfare of the occupants and users of buildings and structures.” [Citations omitted].

The Court of Appeals agreed that while the “open and obvious” defense is not available in common-law premises liability cases where a specific statutory duty exists, that statutory duty does not apply in cases where a violation of a building code is alleged. The reasoning was that the statutory code was not written to protect the public from harm, but only to establish the authority.

SECRET WARDLE NOTES:

Plaintiffs have been attempting to use the building code statutes to impute a legal duty upon owners of buildings to avoid the “open and obvious” defense. Under *Kahler*, it is clear that the building code statute was not written to provide the same type of duty written to cover residential properties, i.e. the duty to keep a premises in reasonable repair.

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